Office-Supreme Court, U.S.
FILED
DEC 2 2 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965
No. 841

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 12, *et al.*,

Appellants.

vs.

THOMAS M. DEACON,

Appellee.

On Appeal From the District Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

BRUNDAGE & HACKLER,
CHARLES K. HACKLER,
JULIUS REICH,
1621 West Ninth Street,
Los Angeles, Calif. 90015,
Attorneys for Appellants.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Jurisdictional statement	1
Opinion below	2
Jurisdiction	2
The Statutes involved	3
Questions presented	3
Statement of the case	3
1. How the case arose	3
2. How the federal question is presented	4
The questions are substantial	5
1. Preesumption of state laws by Section 201(c) of the LMRDA	5
a. Statement of the question	5
b. Argument	6
c. Importance of the question	10
2. The facts which must be alleged and proved to make a showing of "just cause"	11
a. "Just cause"	11
b. Must there be a trial on the issue of "just cause"?	11
c. Must the facts constituting "just cause" first be presented to the labor organization?	12
Conclusion	14

INDEX TO APPENDICES

	Page
Appendix A. Judgment	1
Appendix B. Peremptory Writ of Mandate	4
Appendix C. Opinion of the District Court of Appeal	6
Appendix D. Pertinent Statutes involved	16
Appendix E. California Corporations Code, Sec. 3003	17
Appendix F. Letter from Julius Reich to Thomas M. Deacon, dated Nov. 3, 1965	18

TABLE OF AUTHORITIES

Cases	Page
Beacon Theatres v. Westover, 359 U.S. 500	13,
Goldsmith v. United States Bd. of Tax App., 270 U.S. 117	14
Haiduk v. Atlantic Independent Union, 31 F.R.D. 241	11
Henderson v. Sarle, 197 N.Y.S. 2d 920	10, 11, 13, 14
Hitchcock v. Union & New Haven Trust Co., 134 Conn. 246, 56 A. 2d 655	7
Lawrence v. State Tax Comm'n, 286 U.S. 276	5
Local 20, Teamsters v. Morton, 377 U.S. 252	7
Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95	7
Local 1419, ILA v. Smith, 301 F. 2d 791	11
McGraw v. United Ass'n., 216 F. Supp. 655	11, 12
Mooney v. Bartenders Union, 48 Cal. 2d 841, 313 P. 2d 857	5, 6
Pakarinen v. Butler Bros., 218 Minn. 496, 16 N.W. 2d 769	7
Reconstruction Fin. Corp. v. County of Beaver, 328 U.S. 204	2
Remisiewski v. Parodi Cigar Co., 1 N.J. Super. 249, 64 A. 2d 93	7

Miscellaneous

House Report, 4473, 86th Cong., 1st Sess., February 16, 1959	9
Senate Report, 748, 86th Cong., 1st Sess., January 28, 1959	8
Senate Report, 1137, 86th Cong., 1st Sess., February 19, 1959	9

Statutes — Page

Alabama Code, Title 26, Sec. 382 6
California Code of Civil Procedure, Sec. 2015.5 4
California Corporations Code, Sec. 3003 ....2; 3, 5, 10
Connecticut Statutes Annotated, Secs. 31-77 6
Florida Statutes Annotated, Sec. 447.07 6
Hawaii Revised Laws, Ch. 90, Sec. 90.11 6
Kansas General Statutes, Art. 8, Ch. 44, Sec. 44.806 (1949) 6
Labor-Management Relations Act, Sec. 301(a) 7
Labor-Management Relations Act, Sec. 303 7
Labor-Management Reporting and Disclosure Act, Sec. 103 10
Labor-Management Reporting and Disclosure Act, Sec. 201(b) 10
Labor-Management Reporting and Disclosure Act, Sec. 201(c) 2, 3, 4, 5, 6, 9, 10, 11
Labor-Management Reporting and Disclosure Act, Sec. 603(a) 3, 7, 8, 9, 10
Massachusetts General Laws Annotated, Ch. 180, Sec. 18 6
Minnesota Statutes Annotated, Ch. 179.21 6
New York Constitutional Laws Service, Sec. 726 6
South Dakota Code, Title 17, Sec. 17.1105 (1960 Supp.) 6
73 Statutes at Large, p. 519 3
73 Statutes at Large, p. 524 2
Texas Civil Statutes, Art. 5154a, Sec. 3 6

Page

United States Code, Title 28, Sec. 1257(2) 2
United States Code, Title 29, Sec. 185(a) 7
United States Code, Title 29, Sec. 187 7
United States Code, Title 29, Sec. 216 7
United States Code, Title 29, Sec. 523(a) 3, 8
United States Code, Title 29, Sec. 413 10
United States Code, Title 29, Sec. 431(c) 2, 3, 4
Wisconsin Statutes Annotated, Ch. 111, Sec. 111.08 6

BLANK PAGE

IN THE

Supreme Court of the United States

October Term, 1965
No. .....

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 12, *et al.*,

Appellants.

vs.

THOMAS M. DEACON,

Appellee.

On Appeal From the District Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

Appellants appeal from the decision of the District Court of Appeal of the State of California, Second Appellate District, entered on August 3, 1965, which affirmed the judgment of the Superior Court of the State of California for the County of Los Angeles, entered on June 22, 1964, a copy of which is attached hereto as Appendix A. A copy of the Superior Court's writ of mandate is attached as Exhibit B. This Jurisdictional Statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

Opinion Below.

The opinion of the District Court of Appeal of the State of California, Second Appellate District, is reported at 236 Adv. Cal. App. 325, and appears as Appendix C hereto. The Superior Court for the County of Los Angeles did not render an opinion, and the Supreme Court of the State of California denied a petition for hearing without an opinion.

Jurisdiction.

This suit was brought pursuant to section 201(c) of the Labor-Management Reporting and Disclosure Act of 1959 (the LMRDA), 73 Stat. 524 [29 U.S.C. §431-(c)], and relief was granted pursuant to that section as well as California law, applying section 3003 of the California Corporations Code. A writ of mandate was sought by the Appellee Thomas M. Deacon (Deacon) requiring the Appellant International Union of Operating Engineers, Local No. 12 (the Union) and its officers to permit Deacon to inspect and copy certain books and records of the Union. The judgment of the Superior Court directing that a writ of mandate issue, was entered on June 22, 1964, and notice of appeal was filed in that court on June 24, 1964. The decision of the District Court of Appeal denied the Appellants' petition for rehearing. A petition for hearing to the California Supreme Court was denied by that court on September 29, 1965. Notice of Appeal to the Supreme Court of the United States was filed on October 27, 1965 in the District Court of Appeal.

The jurisdiction of the Supreme Court to review this decision is conferred by 28 U.S.C. §1257(2); see *Reconstruction Fin. Corp. v. County of Beaver,* 328 U.S. 204, 206-07 (1946).

The Statutes Involved.

The federal statute involved is the Labor-Management Reporting and Disclosure Act of 1959 (the LMRDA) 73 Stat. 519, and in particular, sections 201(c) [29 U.S.C. §431(c)] and 603(a) [29 U.S.C. §523(a)]. These sections appear as Appendix D of this Statement.

The state statute involved is section 3003 of the California Corporations Code, and this section appears as Appendix E of this Statement.

Questions Presented.

1. Has the requirement of section 201(c) of the Labor-Management Reporting and Disclosure Act for a showing of "just cause" by a member before he may examine his union's books and records, preempted state laws which do not require any showing of cause for such examination?

2. What facts must be alleged and proved in order to make a showing of "just cause" for the purpose of section 201(c) of the Labor-Management Reporting and Disclosure Act?

Statement of the Case.

1. How the Case Arose.

Appellee Deacon was a member of the Appellant Union (Clerk's Transcript [hereinafter sometimes called "C. T."] 2), and Appellants J. H. Seymour and W. A. Cobb were officers (*ibid.*). Through a petition for a writ of mandate [C. T. 1], Deacon sought to require the Appellants to permit inspection of the Union's books of account, records, papers and documents [C. T. 5].

Both a demurrer and verified answer were filed by Appellants [C. T. 16, 18], along with three declarations in opposition to the granting of the writ [C. T. 20, 22, 26].[1] An affidavit was filed by Deacon [C. T. 24], and the matter was tried by the Superior Court on the basis of these papers.

Judgment was entered by that court, overruling the demurrer and granting a writ of mandate [C. T. 79].

2. How the Federal Question Is Presented.

The allegations of Deacon's petition for a writ of mandate set forth that Deacon was entitled both by virtue of his union membership and by virtue of section 201(c) of the LMRDA, to inspect the Union's records [C. T. 4-5, ¶¶ IX, X]. "The answer . . . denies that Deacon is entitled, either as a member of the Union or under the cited federal law, to inspect the Union's books and records" (Op. of Dist. Ct. of App, at 3). In its Findings of Fact and Conclusions of Law, the Superior Court found that Deacon was entitled to the writ on both of these grounds [Findings of Fact and Conclusion of Law at 2, ¶¶ IX; X].

In the District Court of Appeal, the Appellants contended that there had been no showing by Deacon of "just cause" as required by section 201(c) of the LMRDA (Op. of Dist. Ct. of App. at 2, n. 2 and accompanying text), and further, that "inspection of the books and records [of a labor organization] can be permitted only under section 431, subdivision (c) [of title 29 (LMRDA §201(c))], and cannot be permitted

[1]California practice provides for the filing of "declarations," which are made "under penalty of perjury," and which have the same effect as affidavits, see Cal. Code Civ. Proc. §2015.5.

under the state substantive law" (Op. of Dist. Ct. of App. at 9).

The District Court of Appeal refused to rule upon the Union's contention that state substantive law was preempted under section 201(c) of the LMRDA, and found that there had been sufficient cause for the issuance of the writ.[2]

The Questions Are Substantial.

1. Preemption of State Laws by Section 201(c) of the LMRDA.

a. *Statement of the Question.*

In California, the case of *Mooney v. Bartenders Union,* 48 Cal.2d 841, 313 P.2d 857 (1957), decided prior to the enactment of the LMRDA, held that the same statutory rule applicable to the right of a corporate shareholder to inspect his corporation's records, applied to a union member's right to inspect his union's records. This statutory provision, Cal. Corp. Code §3003 (reprinted in its entirety in Appendix B), provides in part:

> "The . . . books of account . . . of every domestic corporation shall be open to inspection upon the written demand of any shareholder. . . ."

At least ten states other than California have statutory rules relating to either the requirement on the part of labor organizations to file financial reports, or to the rights of members of such organizations to compel a

---

[2]Failure to pass upon a constitutional objection is tantamount to sustaining a state statute, see *Lawrence v. State Tax Comm'n,* 286 U.S. 276, 282-83 (1932).

disclosure of their unions' books and records.[3] In at least one of these states, Connecticut, unions which are subject to the LMRDA are specifically exempted. This list does not include states in which unions are subject to a common law right on the part of members, or where by decision unions have been subjected to the same rules as corporations.[4]

The question presented under this heading then, is to what extent, if at all, have state laws been preempted by the enactment of section 201(c) of the LMRDA, which describes not only the rights but the duties of a union member seeking inspection of union records.

b. *Argument.*

Section 201(c) of the LMRDA appears to have preempted all state substantive laws which are inconsistent with the federal enactment. The concept of such preemption is, of course, not novel; and it is especially not novel in the field of labor relations. The following examples will demonstrate the point that although there is state court jurisdiction to entertain a federal claim, federal law must be applied to the exclusion of all state laws.

Where suit is brought for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce, state

---

[3]See Ala. Code tit. 26, §382; Conn. Stats. Ann. §31-77; Fla. Stats. Ann. §447.07; Hawaii Rev. Laws ch. 90, §90.11; Kan. Gen. Stats. ch. 44, art. 8, §44.806 (1949); Mass. Gen. Laws Ann. ch. 180, §18; Minn. Stats. Ann. ch. 179.21; N.Y. Cons. Laws Serv. (labor) §726; S.D. Code tit. 17, §17.1105 (1960 Supp.); Tex. Civ. Stats. art. 5154a, §3; Wis. Stats. Ann. ch. 111, §111.08.

[4]*E.g.*, California, see *Mooney v. Bartenders Union*, 48 Cal.2d 841, 313 P.2d 857 (1957).

courts have concurrent jurisdiction with federal courts; however, both must apply federal substantive law.

Labor Management Relations Act, Section 301(a) [29 U.S.C. §185(a)];

Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962) (state court has jurisdiction over such litigation [369 U.S. at 101-02], but must apply federal law [369 U.S. at 104]).

A suit brought to redress damages for a secondary boycott or a jurisdictional strike in an industry affecting commerce, is governed by federal law, as developed under section 303 of the Labor-Management Relations Act [29 U.S.C. §187]. Although under this section such a suit may be brought "in any . . . Court having jurisdiction of the parties," state courts are required to apply federal substantive law.

See *Local 20, Teamsters v. Morton*, 377 U.S. 252 (1964).

Under the Fair Labor Standards Act, although state courts have concurrent jurisdiction pursuant to 29 U.S.C. §216, federal law is controlling.

See *Hitchcock v. Union & New Haven Trust Co.*, 134 Conn. 246, 56 A.2d 655 (1947);

Pakarinen v. Butler Bros., 218 Minn. 496, 16 N.W. 2d 769 (1944);

Remisiewski v. Parodi Cigar Co., 1 N.J. Super. 249, 64 A.2d 93 (1949).

In the case of the LMRDA, section 603(a) was specifically designed by Congress to deal with the issue of preemption. This section provides, in part:

> "*Except as explicitly provided to the contrary,* nothing in this Act shall reduce or limit the re-

> sponsibilities of any labor organization . . . under any other Federal law or under the laws of any State, and, *except as explicitly provided to the contrary,* nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State."
>
> LMRDA §603(a) [29 U.S.C. §523(a)]. [Emphasis added].

The statement that "except as explicitly provided to the contrary," is direct evidence of an intent to preempt all other laws—federal as well as state—where such other laws explicitly conflict with a provision of the LMRDA.

This point is emphasized by the fact that most of the bills dealing with the union-member relationship that were before Congress at the same time as the LMRDA, had far more sweeping non-preemptive provisions. For example, in the same session of Congress in which the LMRDA was introduced and passed, S. 748 [86th Cong., 1st Sess., January 28, 1959] was proposed by President Eisenhower [see S. Doc. No. 10, 86th Cong., 1st Sess., January 28, 1959] and introduced by Senator Goldwater, and this bill had the following provision:

> "Sec. 305.
>
> ". . .
>
> "(b) *Nothing contained in this title shall be construed to supersede or modify any existing rights and remedies* to which members of a labor organization are entitled under . . . the provisions of any law of any State or Territory . . ." [emphasis added].

Another bill, the Barden bill [H.R. 4473, 86th Cong., 1st Sess., February 16, 1959], had this provision:

> "Sec. 222. *Nothing contained in this Act shall be construed to supersede or modify any existing rights and remedies* . . . under the provisions of any Federal law or any law of any State . . ." [emphasis added].

Also in the Barden bill was the following:

> "Sec. 306. The rights and remedies provided by this title *shall be in addition to* any and all other rights and remedies . . ." [emphasis added].

Senator McClellan also introduced a bill [S. 1137, 86th Cong., 1st Sess., February 19, 1959], which provided:

> "Sec. 501 . . . [N]*othing in this act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State*" [emphasis added].

With each of these provisions to consider, in which all rights and remedies under the laws of any state were to be preserved in addition to the federal legislation, Congress chose to adopt language that retained state laws except where there was a specific provision in the LMRDA to the contrary.

Since Congress has explicitly set forth the rules governing a member's right to inspect his union's records, it follows that under section 603(a) state rules dealing with this subject are preempted.

The LMRDA in section 201(c) gives to union members the right to inspect two different types of records.

One is a copy of the financial report submitted by the labor organization to the Secretary of Labor, and containing the matters specified in section 201(b). The other is the "books, records, and accounts necessary to verify such report"; and this latter type is available to the member "for just cause."

The LMRDA sets up a test, namely, "just cause," that must be met before a labor organization's books, records and accounts must be opened. Therefore, all state laws regulating the inspection of unions' books are preempted because, in the languge of section 603(a) of the LMRDA, Congress "has explicitly provided to the contrary."[5]

c. *Importance of the Question.*

No state or federal court appears to have decided the question presented here, although state courts have been called upon to render decisions under the federal statute.[6] Neither the Superior Court not the District Court of Appeal in this case would commit itself on the applicability of preemption. Thus, the question remains an open and important one to the ten or more states which have laws governing this subject. In this case, for example, an examination of section 3003 of the California Corporations Code shows that the law of the State of California is much less restrictive than the law under the LMRDA.

---

[5]Compare also, the language of section 103 of the LMRDA [29 U.S.C. §413], which states that "nothing contained in this title [title I] shall limit the rights and remedies of any member of a labor organization under any State or Federal law . . ." No such provision is contained in title II, the title in which section 201(c) is found, thereby reinforcing the argument that where Congress has expressed a scheme for securing to members inspection of their unions' records, that scheme shall be exclusive.

[6]See *Henderson v. Sarle*, 197 N.Y.S. 2d 920 (Sup. Ct. 1960).

2. The Facts Which Must Be Alleged and Proved to Make a Showing of "Just Cause."

The second question presented relates to "just cause."

a. *"Just Cause."*

Although section 201(c) requires a showing of "just cause," there is no standard in the Act itself from which to ascertain when a showing has been made.

A proper showing has been found where it was demonstrated that the labor organization's report to the Secretary of Labor "had not been filed, and also that the secretary of the union had been suspended pending a hearing on charges of embezzling," *Local 1419, ILA v. Smith,* 301 F.2d 791, 792-93 (5th Cir. 1962). In other cases, where factual allegations were lacking, no relief was afforded. See, *e.g., Haiduk v. Atlantic Independent Union,* 31 F.R.D. 241, 243 (E.D. Pa. 1962); *Henderson v. Sarle,* 197 N.Y.S.2d 920, 922 (Sup. Ct. 1960).

The present case fits in neither of these categories, for allegations of wrongdoing were made, which were denied by the Appellants, and all of the Union's records which were allegedly erroneous were presented to the court and shown to have been accurate. The court must have concluded that "just cause" should be determined from the plaintiff's allegations alone. And this raises another substantial subquestion, presented next below.

b. *Must There Be a Trial on the Issue of "Just Cause"?*

The ruling in the present case appears to conflict with other rulings which state that sufficient evidence must be presented "upon which a *determination* of just cause might be made *by the Court,*" *McGraw v. United*

Ass'n., 216 F. Supp. 655, 663-64 (E.D. Tenn. 1963) (emphasis added). In *McGraw*, the court indicated a need for an evaluation of all of the evidence so as to make for itself a determination of whether there was "just cause," and not rely merely upon allegations presented by the plaintiff. The ruling in the present case squarely conflicts with *McGraw*.

c. *Must the Facts Constituting "Just Cause" First Be Presented to the Labor Organization?*

In the present case, Deacon did not first present to the Union the facts which he alleged constituted "just cause." Indeed, these facts were not presented to the Court until some time after the action was commenced, and they were presented at that time by way of affidavit.

Before resorting to court, a requirement of "just cause" should be that a member demands of his union that it produce its books, and this demand should be accompanied by those facts upon which the member reasonably relies to suspect the inaccuracy of his union's report to the Secretary of Labor.

Congress has seen fit to require a showing of "just cause," and a labor organization should be given an opportunity to evaluate a member's showing before the organization is subjected to a law suit.

That this approach is the correct one is evidenced first, by the fact that attorneys' fees are allowed to an applicant who is required to seek relief in court. The labor organization is required to disclose its underlying records only upon a showing of "just cause," and before requiring a union to pay a member's attorney who may be able to demonstrate such cause to a court, the

union should be given an opportunity to assess the member's case. The same facts that are pleaded in court to demonstrate a reasonable belief that the union's report is inaccurate should first be presented to the union for its evaluation, else the statute would be a device for mulcting the membership by way of attorneys' fees any time a discrepancy—which may turn out to be either an honest mistake or an attempted theft—appears in a union's report.

A rule requiring a member to make application to his union before going to court is sound for another reason. Since an equitable remedy is sought (an order requiring that the labor organization open its books), it is a general requirement that there be "irreparable harm and inadequacy of legal remedies," *Beacon Theatres v. Westover,* 359 U.S. 500, 506-07 (1959), and an element in the proof of this proposition in the present case should be that based upon the same facts as are before the court, the applicant sought, but was refused access to the union's records.

In *Henderson v. Sarle,* 197 N.Y.S.2d 920 (Sup. Ct. 1960), the court discussed this position and said:

> "The duty imposed on the officers and the union is to permit examination by a member, for just cause. . . . Such a duty cannot arise until there has been a demand setting forth the cause. . . . The determination . . . is, in the last analysis, for the court, *but that does not mean that the union and its officers are not entitled to have set forth in the demand the information necessary for them to determine on the facts presented whether a statutory duty exists*" [emphasis added].

For failure to allege that all of the facts presented to the court were similarly presented to the union, the court in *Henderson v. Sarle* dismissed the petition.

Cf. Goldsmith v. United States Bd. of Tax App., 270 U.S. 117, 123-24 (1926) (demand and refusal required before petitioner may apply to court).

The decision in the present case conflicts on this point with *Henderson v. Sarle.*

The important question presented, therefore, which is ripe for review, is what factors must be shown to constitute "just cause." Among the factors suggested here is a showing that upon the same facts as are presented to a court in support of an order, the labor organization against whom the order shall run, and against whom attorneys' fees may be assessed, was given an opportunity to voluntarily submit its books for inspection. Since the organization need not submit these books except for "just cause," it should not be found in default unless it has seen the facts allegedly constituting "just cause."

Conclusion.

For the foregoing reasons, the questions presented are substantial and of significant public interest.

The matters presented for consideration shall require, and are deserving of extensive briefing. Although the Appellee Deacon was represented by counsel throughout the litigation below, with the exception of at the stage at which the Appellants petitioned the California Supreme Court for a hearing, we are advised that the Appellee is presently *in propria persona.* (A letter from the undersigned advising the Appellee of his right to counter

designate the records is appended hereto as Appendix F.) In order that the Appellee's rights be protected, along with the rights of other union members similarly situated, we suggest that this Court seek from the Attorney General of the State of California an *amicus curiae* brief.

Respectfully submitted,

BRUNDAGE & HACKLER,
CHARLES K. HACKLER,
JULIUS REICH,
By JULIUS REICH,
Attorneys for Appellants.

APPENDIX A.

Judgment.

Superior Court of the State of California, for the County of Los Angeles.

Thomas M. Deacon, Petitioner, vs. International Union of Operating Engineers, Local No. 12, an unincorporated association, J. H. Seymour, Business Manager, W. A. Cobb, Jr., President, J. J. Twombley, Treasurer, of International Union of Operating Engineers, Local No. 12; an unincorporated association, Doe I, Doe II and Doe III, Respondents. No. 835,897.

This cause coming on regularly for hearing in Department 15, of the above entitled court, on May 11, 1964, before the Honorable Macklin Fleming, Judge presiding without a jury, petitioner appearing in person and by his attorney, Robert A. Gaston, and respondents, International Union of Operating Engineers, Local No. 12, an unincorporated association, J. H. Seymour, Business Manager, W. A. Cobb, Jr., President, and J. J. Twombley, Treasurer, of International Union of Operating Engineers, Local No. 12, an unincorporated association, appearing by their attorney, Albert Brundage, and the said respondents having demurred to the petition hereto and having filed an answer thereto and the Court having heard the arguments of said counsel and the records of proceedings having been considered and the matter argued and submitted, and good cause appearing therefor

"It is Hereby Ordered, Adjudged and Decreed that the demurrer of the respondents, International Union of Operating Engineers, Local. No. 12, J. H. Seymour. Business Manager, W. A. Cobb, Jr., President, J. J.

Twombley, Treasurer, of International Union of Operating Engineers, Local No. 12, is overruled.

"It is Further Ordered, Adjudged and Decreed that a Writ of Mandate issue directed to respondent, International Union of Operating Engineers, Local No. 12, an unincorporated association, and to respondents, W. A. Cobb, Jr., President, J. J. Twombley, Treasurer, and J. H. Seymour, Business Manager, of International Union of Operating Engineers, Local No. 12, an unincorporated association, requiring said respondents to permit said petitioner Thomas M. Deacon and/or his agents, at any time during business hours, to inspect the books of account, records, papers and documents of the aforesaid organization for the year ended December 31, 1961, with respect to the three items of salary, allowances and expenses, including reimbursed expenses, of the thirty-five named officers, ten named business reprssentatives, and executive secretary, as set forth in the Report submitted to the United States Department of Labor in accordance with Section 431 of Title XXXIX, United States Code, relating to the fiscal year ending December 31, 1961, at the office of said respondent union located at 2323 West Eighth Street, Los Angeles, California, such inspection to be at such times and for such periods as may be required by said petitioner and/or his agents to inspect all the above described books of account, records, papers and documents of the said respondent union for the year ending December 31, 1961, and to permit said petitioner and/or his agents to make copies of all, or any part of said books of account, records, papers and documents; such inspection and making of copies to be at the expense of said petitioner."

~~IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner THOMAS M. DEACON have and recover from said respondents reasonable attorney's fees taxed in the sum of .....~~

The Clerk is directed to enter this Judgment and is directed to issue a Writ of Mandate in accordance with this Judgment.

Dated: June 22, 1964.

Macklin Fleming
Judge of the Superior Court

APPENDIX B.

Peremptory Writ of Mandate.

Superior Court of the State of California, for the County of Los Angeles.

Thomas M. Deacon, Petitioner, vs. International Union of Operating Engineers, Local No. 12, an unincorporated association, J. H. Seymour, Business Manager, W. A. Cobb, Jr., President, J. J. Twombley, Treasurer, of International Union of Operation Engineers, Local No. 12, an unincorporated association, Doe I, Doe II and Doe III, Respondents. No. 835,897.

To International Union of Operating Engineers, Local No. 12, an unincorporated association, J. H. Seymour, Business manager, W. A. Cobb, Jr., President, and J. J. Twombley, Treasurer, of International Union of Operating Engineers, Local No. 12, an unincorporated association:

You, and Each of You, are Hereby Directed to Permit Thomas M. Deacon, petitioner herein, and/or agents of said Thomas M. Deacon at any time during business hours of said International Union of Operating Engineers, Local No. 12; at the office of said International Union of Operating Engineers, Local No. 12, located at 2323 West Eighth Street, Los Angeles, California; such inspection to be at such times and for such periods as may be required by said Thomas M. Deacon and/or his agents for such purpose to inspect the books of account, records, papers and documents of said International Union of Operating Engineers, Local No. 12 for the year ended December 31, 1961, with respect to the three items of salary, allowances and expenses,

including reimbursed expenses, of the thirty-five (35) named officers, ten (10) named business representatives, and executive secretary, as set forth in the Report submitted to the United States Department of Labor, in accordance with Section 431, of Title 29, United States Code relating to the fiscal year ending December 31, 1961, and to permit said Thomas M. Deacon and/or his agent to make copies of all or any part of said books of account, records, paprs and documents. Such inspection and making of copies to be at the expense of said Thomas M. Deacon and to make return in Department 15, June ....., 1964, at 9:30 A.M. as to how you have complied with this Writ.

Dated: May ...., 1964.

Harold J. Ostly, County Clerk and
Clerk of the Superior Court of the
State of California in and for the
County of Los Angeles

By:.....
Deputy

APPENDIX C.

Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

Thomas M. Deacon, Petitioner and Respondent, v. International Union of Operating Engineers, Local No. 12, an unincorporated association; J. H. Seymour, Business Manager, J. F. Twombley, President, and W. A. Cobb, Jr., Treasurer, of International Union of Operating Engineers, Local No. 12, an unincorporated association, Respondents and Appellants. Civil No. 28690.

Filed Aug. 3, 1965.

Appeal from a judgment of the Superior Court of Los Angeles County. Macklin Fleming, Judge. Affirmed.

Brundage, Hackler & Roseman, Charles K. Hackler, and Julius Reich for Respondents and Appellants.

Gaston, Keltner & Adair, and Robert A. Gaston for Petitioner and Respondent.

Petitioner Deacon, who is a member of the respondent Union, sought a writ of mandate in the superior court to permit him to inspect the books and records of the Union to verify certain expenditures which the Union, in its 1961 annual report to the United States Department of Labor, claimed it had made to its officers. The judgment was that a writ of mandate issue requiring respondents to permit Deacon to inspect the Union's 1961 records to verify the reported expenditures to 35 officers, 10 business representatives, and 1

executive secretary of the Union. The Union and three of its officers[1] (respondents) appeal from the judgment.

Appellants (Union and officers) contend that there was no showing of "just cause," as required by federal law,[2] to permit inspection of the Union's books and records.

The matter was heard on the petition, the answer, and affidavits supporting and opposing the petition.

The allegations in the petition are in substance as follows: Deacon has been a member of the Union for 10 years. Respondent officers have custody of books and records which show expenditures made by the Union in 1961. On October 26, 1963, Deacon made a written demand on the officers for permission to inspect said books and records concerning expenses and allowances paid by the Union to certain officers in 1961, and the demand was refused. At the request of the Union, Deacon provided further information and repeated his demand on November 12, 1963, and that demand was refused. Deacon appealed to the general executive board of the Union, the appeal was denied, and Deacon has exhausted his remedies within the Union. The Union filed a report with the United States Department of Labor in 1961 in accordance with section 431 of the United States Code Annotated. The report contains a statement of salaries, allowances and expenses, including reimbursed expenses, which the Union purportedly paid to its officers during the year. The report is incorrect and includes expenses which were not in fact incurred and paid. Deacon is entitled to examine the books and

---

[1]The officers have custody of the books and records.

[2]The Labor-Management Reporting and Disclosure Act of 1959, (29 United States Code Annotated, § 431, subd. (c)).

records by virtue of his membership in the Union and by virtue of section 431 of title 29 of the United States Code Annotated (the Labor-Management and Reporting and Disclosure Act of 1959).

The answer in substance admits all of the allegations of the petition, but denies that Deacon is entitled, either as a member of the Union or under the cited federal law, to inspect the Union's books and records.

An affidavit of Joseph Hurley, in support of the petition, is in substance as follows: He is a member of the Union and was an officer of the Union in 1961. In 1963 he was shown a copy of the report which was made by the Union to the United States Department of Labor for the year 1961. The report states that he, as an officer of the Union, received, in addition to his wages, $1,700 in allowances, and $978.76 in reimbursed expenses. He "questions" the $1,700 in allowances because he did not hold office from July 22 to November 11, and his allowance of $150 per month would therefore not equal $1,700. He is "absolutely certain," however, that he did not receive the $978.76 which was charged against him for reimbursed expenses. He never submitted any vouchers or receipts for, and never demanded payment of, said $978.76. He believes the report has been falsified insofar as it states that he received said reimbursed expenses.

In opposition to the petition, respondents submitted the declaration of Elgin E. Asbury and two declarations of Eleanor Sheehan.

Mr. Asbury's declaration is in substance that he is the independent certified public accountant of the Union; he made a cursory survey of the working papers

in connection with the Union's report to the Department of Labor for 1961; the survey shows that, with regard to the reimbursement expenses and allowances of the Union's officers for that year, there are 1,700 vouchers and 1,700 cancelled checks; and on the basis of his familiarity with the Union's books and records, he estimates that it would take not less than 80 "man-hours" to examine said vouchers and checks.

The two declarations of Eleanor Sheehan are in substance as follows: She is the Union's accountant, and she prepared the material upon which Mr. Asbury based the Union's report to the Department of Labor. To verify the expenses and allowances listed in the report it would take 56½ man-hours to assemble the 1,700 vouchers, and 28¼ man-hours to assemble the 1,700 checks. The attorneys for the Union have advised her that the vouchers and other books and records are required by law to be kept for 5 years, and for that reason it is the policy of the Union not to permit any person to inspect such documents unless the inspection is supervised by a representative of the Union. With regard to the $1,700 in allowances which the Union reportedly paid to Joseph Hurley in 1961, the Union records show that checks in the total amount of $1,700 were paid to Mr. Hurley. With regard to the $978.76 in expenses which were reported to have been paid to Mr. Hurley in 1961, the records show that Mr. Hurley was furnished an automobile and two oil company credit cards; a license fee was paid for the automobile; invoices from the oil companies for gasoline, services and repairs to the automobile were paid; some of the invoices were signed by Mr. Hurley; the total amount of the invoices and the license fee was $978.76.

The court found that all of the allegations of the petition were true, and made a conclusion of law that "the petition contains facts sufficient to grant the relief prayed."[3] The judgment recites that there is good cause for issuance of the writ.

Appellants contend that there was no showing of just cause, as required by federal law, to permit inspection of the Union's books and records. They concede in their reply brief that the state court has jurisdiction to entertain the cause,[4] but they argue that the state court is required to apply section 431, subdivision (c), of title 29 of the United States Code Annotated in determining whether to permit petitioner to examine the books and records.

Section 431, subdivision (c), of title 29 of the United States Code Annotated provides as follows: "Every labor organization required to submit a report under this subchapter[5] shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of

---

[3]The findings of fact and conclusions of law were not included in the clerk's transcript on appeal, but are in the superior court file which has been transferred to this court upon its own motion.

[4]In *Henderson v. Sarle*, 197 N.Y.S. 2d 916, a state court assumed jurisdiction of a union member's mandamus action to inspect union records under section 431, subdivision (c). According to statements made in the briefs in the present case, the herein cause was removed to the federal district court which remanded it to the state court, apparently for technical reasons.

[5]Section 431, subdivision (b), provides for the filing by the union of an annual financial report setting forth, among other things, detailed information with regard to salaries, allowances and other disbursements (including reimbursed expenses) made by the union to its officers who received an aggregate sum of more than $10,000 during the year.

competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment award to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

Prior to the enactment of section 431, subdivision (c), by Congress, the California Supreme Court, in *Mooney v. Bartenders Union Local No. 284,* 48 Cal. 2d 841 [313 P. 2d 857], held that a union member was entitled to a writ of mandate to permit inspection of the union's books and records relating to expenditures designated in the union's quarterly financial statements. The court noted that, under section 3003 of the Corporations Code, a shareholder could inspect a corporation's books and records, and said (p. 843): "The courts will also act *in a proper case* for the purpose of protecting the property rights of a member of an unincorporated association and will enforce, so far as applicable, the rules applied to incorporated bodies of the same character." (Italics added.)[6]

---

[6]*Cf. Henderson v. Sarle,* 197 N.Y.S. 2d 916, wherein it was said (p. 918): "As the Senate debates indicate (105 Cong. Rec. 5851ff [April 23, 1959]), the right to inspect books given by the Labor-Management Reporting and Disclosure Act of 1959 is closely akin to the right given a stockholder to inspect corporate books. Mandamus is the procedure whereby the right to inspect books for a proper purpose is enforced. [Citation.] That respondent union is an unincorporated association does not proscribe use of mandamus to enforce the statutory duty enjoined by the Act, . . ." (Apparently, the reference in this case to pages "5851ff" of the Congressional Record is not correct. There is some reference to the subject matter on pages 6521 and 6522.)

In the present case, petitioner in effect sought inspection of the Union's records on the ground of his membership in the Union *and* on the ground of his rights under section 431, subdivision (c). Appellants argue that inspection of the books and records can be permitted only under section 431, subdivision (c), and cannot be permitted under the state substantive law set forth in the *Mooney* case.

It appears that the policy behind permitting inspection of union records by union members is substantially similar in the state and federal law. Thus, in the *Mooney* case it is said (p. 844): "Among the factors to be considered in determining whether interference by the courts in the internal affairs of a union is warranted on the basis of public policy is the nature of the right asserted by the member. The inspection of records is merely a preliminary step, and, if the manner, time and place are reasonable, the examination cannot harm any proper union activity. Only after examination of the records can it be determined whether or not conditions exist which require correction." The legislative history behind the Labor-Management Reporting and Disclosure Act of 1959 (of which section 431, subdivision (c), is a part) shows a similar policy. In the official committee reports set forth in the United States Code Congressional and Administrative News (1959), volume 2, page 2318, it is said, with reference to the proposed Act: "The . . . bill is primarily designed to correct the abuses which have crept into labor and management and which have been the subject of investigation by the [McClellan] Committee . . . for the past several years. . . ." It was said further therein (p. 2324): "This bill insures that full information concerning the finan-

cial and internal administrative regulations of labor organizations shall be in the first instance available to the members of such organization. In addition, this information is to be made available to the Government, and through the Secretary of Labor, is open to the inspection of the general public. By such disclosure, and by relying on voluntary action by members of labor organizations, abuses can be eradicated effectively." (See 29 U.S.C.A., § 401, subd. (b).)[7]

Irrespective of whether petitioner has separate rights to inspect under state law and under federal law, there must be a proper showing to justify the inspection. In the *Mooney* case, as above shown, inspection will be permitted "in a proper case." Under section 431, subdivision (c), inspection will be permitted where there is a showing of "just cause." In the present case the court in effect found that there was a showing of "good cause" for the inspection. There is no material difference between the terms "just cause" and "good cause," and the implication from the language used in

---

[7]The similarity of the policy behind the *Mooney* case and section 431, subdivision (c), is exemplified by comment in an article which analyzed the *Mooney* case while the congressional investigations were in process. That comment is as follows: "The decision of the Supreme Court of California in the *Mooney* case is . . . highly commendable in enforcing the right of a member of a labor union to inspect its financial records; . . . The decision should be viewed in light of the recent and continued congressional investigations into the labor movement. . . . The members of labor organizations are the first line of defense against graft and corruption within their ranks, and as such, they must have the right to inspect the records of such unions in order to protect both themselves and society from harmful consequences. . . . Only after examination of the records can it be determined whether or not conditions exist which require correction. The trade union can then police itself more effectively and make recourse to judicial tribunals less frequent, . . ." (9 Hastings, L. J., 96, 101.)

the *Mooney* case is that reasonable grounds for the inspection must be shown.

In *Rekant v. Rabinowitz* (1961), 194 F. Supp. 194, a union member brought an action under section 431, subdivision (c), to inspect the union's records in order to verify disbursements listed in the union's report filed under section 431, subdivision (b). The member alleged that the report did not disclose the purpose of three items listed as disbursements. The court held that the allegations were "just cause" for inspection of the records. (See *Local No.* 1419, *ILA, General Longshore Wkrs. U. v. Smith* [1962], 301 F. 2d 791, 796, where it was also held *[citing Rekant v. Rabinowitz, supra]* that there was just cause for inspection of the union's records. The member claimed that statements in the union's report relating to membership dues and initiation fees were fraudulent and incorrect.)

In the present case, petitioner alleged that the report is incorrect and includes expenditures which were not in fact paid. In support of those allegations, petitioner submitted an affidavit of one of the officers to the effect that he had not received the allowances and reimbursed expenses which the report designates that he received. Although the respondents submitted affidavits to the effect that they had examined the records and that the records verified the expenditures referred to in the report, the conflict in the evidence was a matter to be resolved by the trial court. The court in effect found that there was just cause for the inspection, and this finding appears to be supported by the record. Although respondents' affidavits include statements to the effect that it would take 80 hours to examine the records and that it is the "policy" of the union to have such inspec-

tion supervised by a union representative, the inspection is merely a preliminary step to determine whether abuses may exist, and it does not appear to interfere unreasonably with the union's policy in view of the broader public policy to be served by permitting the inspection.

Respondent Deacon (petitioner in the trial court) contends that he is entitled to reasonable attorney's fees under section 431, subdivision (c). As previously indicated, section 431, subdivision (c), provides that the court may, in its discretion, allow plaintiff a reasonable attorney's fee. As shown by the record, the court struck from the proposed judgment (submitted by petitioner) a provision that petitioner Deacon be awarded attorney's fees, and Deacon did not appeal from any part of the judgment. It does not appear that the court abused its discretion in not allowing attorney's fees.

The judgment is affirmed.

Wood, *P. J.*

We concur:

Fourt, *J.*

Lillie, *J.*

APPENDIX D.

1. LMRDA section 201(c).

Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

2. LMRDA section 603(a).

Except as explicitly provided to the contrary, nothing in this chapter shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

APPENDIX E.

California Corporations Code section 3003.

The share register or duplicate share register, the books of account, and minutes of proceedings of the shareholders and the board of directors and of executive committees of the directors of every domestic corporation and of foreign corporations keeping any such records in this State shall be open to inspection upon the written demand of any shareholder or holder of a voting trust certificate at any reasonable time, for a purpose reasonably related to his interests as a shareholder or as the holder of such voting trust certificate, and shall be exhibited at any time when required by the demand at any shareholders' meeting of 10 percent of the shares represented at the meeting.

Such inspection by a shareholder or holder of a voting trust certificate may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts. The right of the shareholders to inspect the corporate records may not be limited in the articles or by-laws.

Demand of inspection other than at a shareholders' meeting shall be made in writing upon the president, secretary, assistant secretary, or general manager of the corporation.

APPENDIX F.

[Letterhead]

November 3, 1965

Thomas M. Deacon
1220 South Westlake Avenue
Los Angeles, California

Re: Thomas M. Deacon, vs. International Union of Operating Engineers, Local *No. 12, et al. 2d Civil No. 28690*

Dear Mr. Deacon:

As you are aware, this office has filed a notice of appeal to the United States Supreme Court in the above entitled matter. The notice was filed on October 26, 1965.

Rule 12(1) of the United States Supreme Court Rules permits you, as the Appellee, to file in the California District Court of Appeal a cross-designation of additional portions of the record to be certified, within twenty days from the date the notice of appeal was filed.

This letter to you should not be construed as an indication that you shall be kept advised of the various time limits involved in this matter.

Yours very truly,

Brundage & Hackler

By

Julius (Mel) Reich

JMR:dl

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 141

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 12, *et al.*,

Appellants,

vs.

THOMAS M. DEACON,

Appellee.

On Appeal From the District Court of Appeal of the State of California, Second Appellate District

REPLY OF THOMAS M. DEACON, APPELLEE, TO APPELLANTS' JURISDICTIONAL STATEMENT

THOMAS MICHAEL DEACON
1220 South Western Avenue
Los Angeles, California 90006

Appellee
In Propria Persona

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 841

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 12, *et al.*,

Appellants.

vs.

THOMAS M. DEACON,

Appellee.

On Appeal From the District Court of Appeal of the State of California, Second Appellate District.

REPLY OF THOMAS M. DEACON, APPELLEE, TO APPELLANTS' JURISDICTIONAL STATEMENT

To the Honorable, the Chief Justice of the United States of America, and the Justices of the Supreme Court of the United States of America:

Thomas M. Deacon appears in this matter in his own behalf. He does so because of his perfect confidence that the Justices of this Honorable Court will see the weaknesses of Appellants' Jurisdictional Statement as clearly and readily as any lawyer he might employ and without the need of assistance from any such lawyer.

It seems to Appellee as a layman that the keynote of Appellants' effort is sounded in the last sentence of their brief wherein their lawyers state: "We suggest that this court seek from the Attorney General of the State of California an *amicus curiae* brief."

This case is purely the litigation of private citizens, a case between a humble, truth-seeking, justice-seeking private citizen and a labor union of which he is a member. The Attorney General of the State of California is a public official, whose duties in the service of the public are clearly defined in California law, and who has no authority whatsoever to participate on either side of private, civil litigation. Any time he might spend on this particular civil controversy between private citizens would be taken from the public which pays him for serving them in matters outlined in the law of his authority. It is significant that in making their suggestion that this sort of conduct by a public official be invited by this Honorable Court, counsel cites no authority in law, morals or policy to support such a suggestion.

Appellee feels that the Appellants were not quite as frank with this court in their statement as duty required them to be. If it ever should be noted that Appellee is in error in this feeling, he will be only too eager to apologize. Appellants' brief seems to insinuate that the Appellants were denied an opportunity to present evidence to the trial court; indeed to insinuate that no proper evidence was received.

The best answer to this innuendo is set forth in the Opinion of the District Court of Appeal of California,

Appendix C to the brief, pp. 7-10 of the appendices. The court states:

> "The matter was heard on the petition, the answer, and affidavits supporting and opposing the petition."

It was so heard, of course, on the stipulation of the parties and with their knowledge and consent. Appellants did not request leave to present any other evidence, and they do not say that they did. The District Court of Appeal, after making the foregoing statement, sets forth an accurate summary of the evidence.

It, of course, is not necessary, but Appellee would note the fact that when the Supreme Court of California denied Appellants' petition for a hearing, it had before it all the records of the case, and its denial without any dissent constituted a full affirmance of the decisions of the trial court and the District Court of Appeal.

This Appellee does not have the audacity to believe that he could indite a better answer to Appellants' brief than that which now exists in:

1. The Opinion of the District Court of Appeal of California (Appendix C).

2. The pertinent law. (Appendix D).

3. The uniform and unanimous decisions of all California courts involved, including the Supreme Court of the State.

4. The fact that Appellant impliedly admits the truth that it never has permitted this Appellee, a member of the Appellant Union, to see the books and records which

he believes he must see in the interests of honesty and justice.

5. The impliedly admitted fact that Appellant, for reasons best known to itself, does not want Appellee to see such records.

Appellee respectfully submits that no occasion exists in law, fact or justice, for this Honorable Court to take this case into its labors.

Respectfully submitted,

THOMAS M. DEACON
Appellee